

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>IN RE:</b>	§	
	§	
<b>BURT LEE BURNETT,</b>	§	<b>CASE NUMBER 17-42678-rfn11</b>
<b>Debtor</b>	§	<b>CHAPTER 11</b>

**MOTION TO LIFT STAY**

**PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATION IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.**

**ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 501 WEST 10<sup>th</sup> STREET, ROOM, FORT WORTH, TEXAS 76102, BEFORE CLOSE OF BUSINESS ON AUGUST 11, 2017, WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED ON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE APPOINTED IN THIS CASE.**

**NOW COMES**, Movant, AYLOIS COOK (“Movant”), by and through his attorney of record, and complaining of BURT LEE BURNETT, hereinafter referred to as “Debtor” and would show the Court as follows:

1. This Court has jurisdiction of this proceeding pursuant to §11 U.S.C. Section 362(d), §1301 and this proceeding has been filed in accordance with Rule 9014 of the Bankruptcy Rules.
2. Debtor has filed a Petition under Chapter 11 of the U.S. Bankruptcy Code (the “Code”) on June 30, 2017.
3. On January 27, 2017, Movant filed a lawsuit in the state court case styled: Aylois Cook v. Burt Lee Burnett et al, Case No. 11034-D, 350<sup>th</sup> District Court, Taylor County, Texas (“Cook Lawsuit”).

4. On June 27, 2017, Movant filed an Amended Petition in the Cook Lawsuit. A true and correct copy of the Cook Lawsuit is attached hereto as Exhibit “A.”

5. The Debtor has committed legal malpractice refusing to reimburse Movant and has utilized Bankruptcy to gain an unfair advantage to stay the pending litigation in District Court.

6. The Debtor has committed legal malpractice on Aylois Cook consisting of actual and consequential damages which continue to burden the Movant, including post-interest costs.

7. The Movant asks the Court to lift the stay because there is no adequate protection for the common law remedy to which the Movant has been injured due to Debtors actions that consisted of legal malpractice.

8. The Movant petitions the Court to lift the stay so that depositions and the current legal malpractice case within the State may continue, so that Movant may seek common law remedy.

9. In *Stern v. Marshall*, 132 S.Ct. 2594, 180 L.Ed.2d 475 (June 23, 2011), the Supreme Court ruled that the Bankruptcy Court lacked the constitutional authority, per Article III of the Constitution, to enter a final judgment based on common law that is derived from a cause of action within the State’s jurisdiction. The Supreme Court also stated that a final, binding judgment by a Court with broad substantive jurisdiction, on a common-law cause of action that neither derives from nor depends upon any agency regulatory regime, is not within the Bankruptcy Court’s jurisdiction per Article III of the Constitution. *Id.* at 2615. *See also; Kingdom Fresh Produce, Inc. v. Stokes Law Office, L.L.P.* (In re Delta Produce, L.P.), 2016 U.S. App. LEXIS 22998, \*12, 845 F.3d 609 (5th Cir. Tex. 2016).

10. Under the circumstances described above, good cause exists for lifting the stay, including, but not limited to, Movant's lack of adequate protection.

11. The Movant requests that the Court lift the stay in order for an adjudication on the common-law claim in State District Court.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Movant prays that the Court grant the Motion to Lift the Automatic Stay and to further grant all other and further relief, in law or in equity, to which Creditor may be justly entitled.

Respectfully submitted,

THE NACOL LAW FIRM PC  
990 South Sherman Street  
Richardson, Texas 75081  
Tel: (972) 690-3333  
Fax: (972) 690-9901  
Email: marknacol@nacollawfirm.com  
Email: julian@nacollawfirm.com



By: \_\_\_\_\_  
Mark A. Nacol  
Texas Bar No. 14775100  
Julian M. Nacol  
Texas Bar No. 24102264  
Attorney for Movant

**Certificate of Service**

I certify that a true copy of the Motion to Lift Stay has been forwarded by ECF and/or U.S. regular mail, to all parties whose names are listed below on July 28, 2017, and to the attorney of record for Debtor, Areya Holder, Holder Law, at 800 W. Airport Freeway, Suite 800, Irving, Texas 75062.

United States Trustee  
1100 Commerce Street, Room 976  
Dallas, TX 75242-0996



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Julian M. Nacol  
Attorney for Movant

**Certification of Conference**

Movant certifies that he has complied with Local Bankruptcy Rule 7007-1(a) and conferred with Debtor's attorney, Areya Holder Aurzada on July 28, 2017 and she stated that she is opposed to the filing of this motion.



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Julian M. Nacol  
Attorney for Movant